

In the Matter of Jason Stowe,
County Correction Sergeant, Atlantic County
DOP Docket No. 2004-3466
(Merit System Board, decided February 9, 2005)

Jason Stowe requests that he be assigned a retroactive appointment date for record purposes and seeks eligibility for the County Correction Lieutenant (PC2627E), Atlantic County examination.

By way of background, the promotional examination for County Correction Lieutenant (PC2627E), Atlantic County was open to employees in the competitive division in the Atlantic County Department of Public Safety who completed their working test period as of the closing date of December 22, 2003 and were serving in the title of County Correction Sergeant. A review of Departmental records indicates that appellant was granted a leave of absence from January 23, 2003 until October 6, 2003. On October 5, 2003, appellant was provisionally appointed to the County Correction Sergeant title and was permanently appointed from the certification issued on October 31, 2003 (Certification No. PL031580) effective the date of the certification. The Division of Selection Services determined that appellant was not eligible for the subject examination since he lacked the required amount of permanent status as of the closing date. It is noted that 10 names appear on the resultant eligible list.

On appeal, appellant indicates that he was on active duty in the United States Army from January 27, 2003 until he was released on October 24, 2003. He also indicates that he returned to work on October 6, 2003. He contends that “in my absences from the facility, a provisional position for County Correction Sergeant was filled. This provisional position was to remain until I returned, but would have been a permanent [*sic*] position if I was available to be at the facility.” He argues that had he not been activated, he would have received a permanent appointment to the County Correction Sergeant title in June 2003.

It is noted that the appointing authority and the affected bargaining unit were notified of this matter and did not file objections.

CONCLUSION

A retroactive appointment date “for seniority purposes only” may be approved by the Commissioner of Personnel when it is evidenced that an appellant could have been appointed on the subject date, but through error on the part of either the appointing authority or the Department of Personnel, received a later appointment date, or for other good cause. See *N.J.A.C. 4A:4-1.10(c)*. The “for seniority purposes only” appointment designation establishes that an appellant has no claim for or entitlement to back pay. However, such an award establishes that for seniority-based programs, such as salary step placement, layoffs, and vacation leave time entitlement, seniority is predicated upon the retroactive appointment date. See *In the Matter of Wayne A. Robbins* (Merit System Board, decided September 5, 1991).

A review of Departmental records indicates that appellant ranked 7th on the County Correction Sergeant (PC2639B), Atlantic County, eligible list, which was promulgated on September 13, 2001 and expired on September 12, 2004. The first certification of the eligible list issued on September 14, 2001 (Certification No. PL011716) resulted in the appointment of the 1st and 2nd ranked eligibles; the second certification dated December 14, 2001 (Certification No. PL020076) resulted in the appointment of the third ranked eligible from the list; the third certification dated September 6, 2002 (Certification No. PL022074) resulted in the appointment of the fourth ranked eligible; the fourth certification dated November 18, 2002 (Certification No. PL022461) resulted in the appointment of the fifth and sixth ranked eligibles. Appellant and the eighth ranked eligible, James Sharkey, were appointed from the fifth certification, Certification No. PL031580, on October 31, 2003. It is noted that Mr. Sharkey received a temporary appointment to the County Correction Sergeant title effective May 15, 2003. Jerry Pappas, who ranked 9th on the list, received a temporary appointment to the County Correction Sergeant title on June 22, 2003 and was permanently appointed from Certification No. PL031580 on January 1, 2004.

It is noted that the appointing authority could have considered appellant for appointment pursuant to *N.J.A.C. 4A:4-4.6(a)*, which provides that interested eligibles on military leave shall continue to be certified and the appointing authority may consider such eligibles immediately available for appointment even though reporting for work may be delayed. It is not clear from the record as to why the appointing authority gave lower ranking individuals temporary appointments when a complete list existed. However, it appears that the appointing authority wished to hold the position of County Correction Sergeant open until appellant's return from military leave. Given that the appointing authority has not raised an objection to his request and based on the circumstances presented, it is appropriate to grant appellant a retroactive date of permanent appointment to County Correction Sergeant of June 22, 2003 for seniority and record keeping purposes.

With respect to appellant's eligibility for the promotional examination for County Correction Lieutenant (PC2627E), appellant must have actually served in and performed the duties of the County Correction Sergeant title during the requisite working test period in order to be eligible. *See In the Matters of David J. Barrett, Fire Captain (PM3511E) and Robert F. O'Neill and Anthony J. Verley, Deputy Fire Chief (PM3590D)* (MSB, decided November 19, 2003) (Individuals who had received retroactive appointment dates to the Fire Captain title solely on equitable considerations but who did not meet the time in grade service requirements as of the closing date of the announcement were not entitled to sit for the examination for Deputy Fire Chief.) As noted previously, appellant was permanently appointed to the title of County Correction Sergeant on October 31, 2003. Therefore, as of the December 22, 2003 closing date, he had not completed the working test period.

ORDER

Therefore, it is ordered that appellant receive a date of permanent appointment to County Correction Sergeant of June 22, 2003 and all of his seniority based benefits be adjusted accordingly. It is further ordered that appellant's appeal of his ineligibility for the County Correction Lieutenant (PC2627E) promotional examination be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.